

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

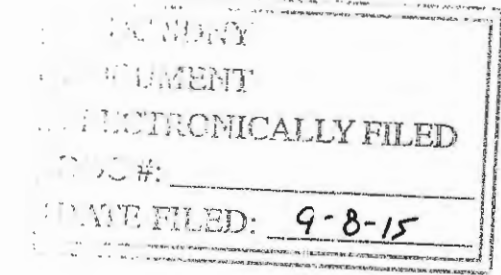
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LUIS RICARDO PAULINO RODRIGUEZ,

Plaintiff,

-against-

NEW YORK DOWNTOWN HOSPITAL and
THOMAS NAPARST, M.D.,

Defendants.
-----X



14 Civ. 5958 (PAC) (SN)

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Luis Ricardo Paulino Rodriguez (“Plaintiff” or “Rodriguez”) brings this action against the New York Presbyterian Lower Manhattan Hospital (the “Hospital”) and Thomas Naparst, M.D. (“Naparst”) for violations of his constitutional rights while he was a detainee at the Metropolitan Correctional Center of New York (“MCC”).¹ Rodriguez alleges that he received inadequate medical care at the Hospital, and that Naparst and the Hospital were deliberately indifferent to his serious medical condition in violation of the Fifth Amendment. Naparst has never been served. The Hospital moves to dismiss the complaint for failure to state a claim.

On July 31, 2015, Magistrate Judge Sarah Netburn issued a Report and Recommendation

¹ Rodriguez has also sued the Warden of the MCC and its clinical director, Dr. Bussanich, based on the same injuries discussed herein. *See* 13 Civ. 3643. The Court previously denied Bussanich’s motion for judgment on the pleadings and granted expedited, limited discovery on the issue of Rodriguez’s exhaustion efforts. *Rodriguez v. Warden, Metro. Corr. Facility*, 2015 WL 857871 (S.D.N.Y. Feb. 27, 2015).

On July 31, 2015, Magistrate Judge Sarah Netburn issued a Report and Recommendation (“R & R”) on the motion.² Magistrate Judge Netburn construes Rodriguez’s complaint as raising two claims: “(1) a *Bivens* claim for deliberate indifference to a serious medical need; and (2) a state law claim for negligent medical care.” R & R at 6. With respect to the merits, Magistrate Judge Netburn recommends that the Hospital’s motion to dismiss be granted and that the Court *sua sponte* dismiss the claim against Naparst. R & R at 6-9. Magistrate Judge Netburn finds that the Hospital cannot be subject to a *Bivens* action under *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61 (2001), because it is a privately run hospital, and that Naparst cannot be subject to a *Bivens* action under *Minnecci v. Pollard*, 132 S. Ct. 617 (2012), because he is a privately employed individual. *Id.* at 6-8. Magistrate Judge Netburn also recommends that the Court decline to exercise supplemental jurisdiction over Rodriguez’s state law claims. *Id.* at 9.

The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where neither party makes written objections, the Court may adopt the R & R as long as there is no clear error on the face of the record. *Wilds v. United Parcel Servs., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

² For the facts of this case, see Magistrate Judge Netburn’s R & R (Dkt. 34).

Here, neither party has objected to the R & R, which was issued more than a month ago. Therefore, the Court reviews the R & R for clear error and finds none. The R & R is adopted in its entirety, and Rodriguez's complaint against the Hospital and Naparst is dismissed with prejudice. The Clerk of the Court is directed to enter judgment and close this case.

SO ORDERED:



PAUL A. CROTTY

United States District Judge

Dated: September 8, 2015
New York, New York

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